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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 30 2012

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF WASHINGTON**

12 **JOSEPH YANEZ,**) **Case No. CV-12-227-EFS**
13)
14 Plaintiff,) **COMPLAINT**
15)
16 vs.)
17)
18 **NIAGARA CREDIT SOLUTIONS,**)
19 **INC,**)
20 Defendant.)

21 **NATURE OF ACTION**

22 1. This is an action brought under the federal Fair Debt Collection
23 Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, and the Washington
24 Consumer Protection Act ("WCPA"), Chapter 19.86, RCW.

25 **JURISDICTION AND VENUE**

26 2. This Court has jurisdiction under 15 U.S.C. § 1692k(d), 28 U.S.C. §
27 1331, and 28 U.S.C. § 1367(a).

28 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b),

1 where the acts and transactions giving rise to Plaintiff's action occurred in this
2 district, where Plaintiff resides in this district, and/or where Defendant transacts
3 business in this district.
4

5 **PARTIES**

6
7 4. Plaintiff, Joseph Yanez ("Plaintiff"), is a natural person who at all
8 relevant times resided in the State of Washington, County of Douglas, and City of
9 Palisades.
10

11 5. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

12 6. Plaintiff is a "debtor" as defined by RCW § 19.16.100(11).

13
14 7. Defendant, Niagara Credit Solutions, Inc ("Defendant") is an entity
15 who at all relevant times was engaged, by use of the mails and telephone, in the
16 business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C.
17 § 1692a(5).
18

19 8. Defendant at all relevant times was engaged, by use of the mails and
20 telephone, in the business of attempting to collect a "claim" from Plaintiff as
21 defined by RCW § 19.16.100(5).
22

23 9. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

24
25 10. Defendant is a "collection agency" as defined by RCW §
26 19.16.100(2), or alternatively, an "out-of-state collection agency" as defined by
27 RCW § 19.16.100(4).
28

FACTUAL ALLEGATIONS

11. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendant.

12. Plaintiff is a natural person obligated, or allegedly obligated, for the payment of money or thing of value arising out of any agreement or contract, express or implied, owed or due, or asserted to be owed or due a creditor other than Defendant.

13. Plaintiff's obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendant, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes.

14. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

15. In connection with collection of an alleged debt in default, Defendant sent Plaintiff initial communication dated December 21, 2011, in which Defendant demanded payment of \$1,600.83 for payment of an alleged debt to Springleaf Financial Services, Inc. f/k/a American General Financial Services.

16. Defendant's initial communication failed to provide an itemization

1 of the amount of debt, or otherwise failed to provide all of the information
2 required by RCW § 19.16.250(8).
3

4 17. Plaintiff previously paid the alleged debt to Springleaf Financial
5 Services, Inc. f/k/a American General Financial Services in full on or about
6 August 14, 2007.
7

8 18. Further, a court of competent jurisdiction determined Plaintiff did
9 not owe said debt subsequent to a trial of the matter on or about March 5, 2010,
10 where Springleaf Financial Services, Inc. f/k/a American General Financial
11 Services was denied judgment against Plaintiff for the alleged debt.
12

13 19. Upon receipt of Defendant's demand for payment, and as a direct
14 and proximate result thereof, Plaintiff sent Defendant, via certified mail, a written
15 dispute letter dated December 29, 2011.
16

17 20. As a direct and proximate result of Defendant's collection efforts,
18 Plaintiff sent the abovementioned dispute letter.
19

20 21. Plaintiff incurred a charge for the postage and mailing of the
21 abovementioned dispute letter.
22

23
24 **COUNT I**
25 **VIOLATION OF 15 U.S.C. § 1692e(2)(A)**

26 22. Plaintiff repeats and re-alleges each and every allegation contained
27 above.
28

1 23. Defendant violated 15 U.S.C. § 1692e(2)(A) by falsely representing
2 the character, amount, or legal status of Plaintiff's debt.
3

4 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 5 a) Adjudging that Defendant violated 15 U.S.C. § 1692e(2)(A);
6
7 b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §
8 1692k, in the amount of \$1,000.00;
9
10 c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k;
11
12 d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
13 this action;
14
15 e) Awarding Plaintiff any pre-judgment and post-judgment interest as
16 may be allowed under the law;
17
18 f) Awarding such other and further relief as the Court may deem just
19 and proper.

20 **COUNT II**
21 **VIOLATION OF 15 U.S.C. § 1692e(10)**

22 24. Plaintiff repeats and re-alleges each and every allegation contained
23 above.

24 25. Defendant violated 15 U.S.C. § 1692e(10) by using false
25 representations and deceptive practices in connection with collection of an
26 alleged debt from Plaintiff.
27
28

1 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 2 a) Adjudging that Defendant violated 15 U.S.C. § 1692e(10);
- 3
- 4 b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §
- 5 1692k, in the amount of \$1,000.00;
- 6
- 7 c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k;
- 8
- 9 d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
- 10 this action;
- 11
- 12 e) Awarding Plaintiff any pre-judgment and post-judgment interest as
- 13 may be allowed under the law;
- 14
- 15 f) Awarding such other and further relief as the Court may deem just
- 16 and proper.

17 **COUNT III**

18 **VIOLATION OF RCW § 19.86.020**

19 26. Plaintiff repeats and re-alleges each and every allegation contained

20

21 above.

22 27. The WCPA declares unlawful "[u]nfair methods of competition and

23 unfair or deceptive acts or practices in the conduct of any trade or commerce."

24

25 RCW § 19.86.020.

26 28. "[T]he commission by a licensee or an employee of a licensee of an

27

28 act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or

1 practices or unfair methods of competition in the conduct of trade or commerce
2 for the purpose of the application of the Consumer Protection Act found in
3 chapter 19.86 RCW.” RCW § 19.16.440.
4

5 29. The Washington Collection Agency Act provides:

6 No licensee or employee of a licensee shall:

7 * * *

8
9
10 (8) Give or send to any debtor or cause to be given or sent to
11 any debtor, any notice, letter, message, or form, other than
12 through proper legal action, process, or proceedings, which
13 represents or implies that a claim exists unless it shall indicate
14 in clear and legible type:

15 * * *

16 (c) If the notice, letter, message, or form is the first notice to
17 the debtor or if the licensee is attempting to collect a different
18 amount than indicated in his or her or its first notice to the
19 debtor, an itemization of the claim asserted must be made
20 including:

21 (i) Amount owing on the original obligation at the time it
22 was received by the licensee for collection or by assignment;

23 (ii) Interest or service charge, collection costs, or late
24 payment charges, if any, added to the original obligation by the
25 original creditor, customer or assignor before it was received by
26 the licensee for collection, if such information is known by the
27 licensee or employee: PROVIDED, That upon written request
28 of the debtor, the licensee shall make a reasonable effort to
obtain information on such items and provide this information
to the debtor;

(iii) Interest or service charge, if any, added by the licensee

1 or customer or assignor after the obligation was received by the
2 licensee for collection;

3 (iv) Collection costs, if any, that the licensee is attempting to
4 collect;

5 (v) Attorneys' fees, if any, that the licensee is attempting to
6 collect on his or her or its behalf or on the behalf of a customer
7 or assignor; and

8 (vi) Any other charge or fee that the licensee is attempting to
9 collect on his or her or its own behalf or on the behalf of a
10 customer or assignor.

11 RCW § 19.16.250(8).

12 30. Defendant violated RCW § 19.16.250(8) by failing to itemize
13 Plaintiff's alleged debt or otherwise include the information required by that
14 section in Defendant's correspondence to Plaintiff.
15

16 31. By Defendant's violation of RCW § 19.16.250(8), Defendant
17 engaged in a per se unfair act or practice or unfair method of competition in the
18 conduct of trade or commerce for the purpose of the application of the WCPA.
19
20

21 32. In a private action in which an unfair or deceptive act or practice is
22 alleged under RCW § 19.86.020, a claimant may establish that the act or practice
23 is injurious to the public interest because it violates a statute that incorporates
24 Chapter 19.86 RCW. RCW § 19.86.093(1).
25

26 33. A violation of the CAA implicates the public interest. *Evergreen*
27 *Collectors v. Holt*, 60 Wash. App. 151, 156 (Wash. App., Div. 2, 1991)
28

1 (explaining that a claimant asserting a *per se* violation based upon a violation of
2 the CAA need not prove that the public interest was affected as “[s]uch an
3 analysis would be superfluous in a case where, as here, the plaintiff establishes a
4 *per se* violation of the Consumer Protection Act by conduct statutorily declared to
5 be violative of the Act”); *see also Panag v. Farmers Ins. Co. of Washington*, 204
6 P.3d 885, 897 (Wash. 2009) (“The business of debt collection affects the public
7 interest, and collection agencies are subject to strict regulation to ensure they deal
8 fairly and honestly with alleged debtors.”).

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10
11
12 34. Defendant’s collection activity directly and proximately caused
13 Plaintiff injury, including time and expense incurred in defense of Defendant’s
14 collection activities, not limited to postage and mailing fees incurred in disputing
15 the validity of the debt sought to be collected and otherwise communicating with
16 Defendant in response to its debt collection activity.

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19 WHEREFORE, Plaintiff prays for relief and judgment, as follows:
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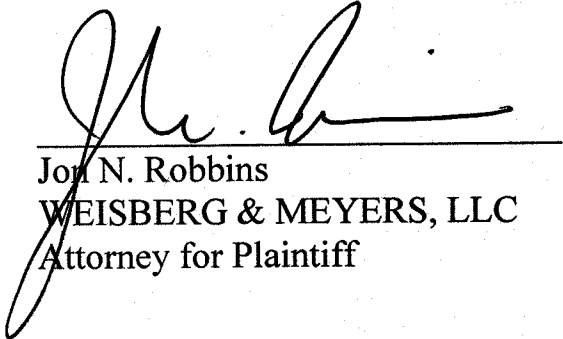
- 21 a) Adjudging that Defendant violated RCW § 19.86.020;
22 b) Awarding Plaintiff actual damages pursuant to RCW § 19.86.090;
23 c) Awarding Plaintiff discretionary treble damages pursuant to RCW §
24 19.86.090;
25 d) Awarding Plaintiff reasonable attorneys’ fees and costs incurred in
26 this action, pursuant to RCW § 19.86.090;
27
28

- 1 e) Awarding Plaintiff any pre-judgment and post-judgment interest as
2 may be allowed under the law; and
3
4 f) Awarding such other and further relief as the Court may deem just
5 and proper.
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7 **TRIAL BY JURY**

8 35. Plaintiff is entitled to and hereby demands a trial by jury.
9

10 Respectfully submitted this 17th day of April, 2012.
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14 Jon N. Robbins
15 WEISBERG & MEYERS, LLC
16 Attorney for Plaintiff
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